

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

TADARRA SCRANTON,)	
)	
Petitioner,)	
)	
v.)	No. 4:08CV766 RWS
)	
TROY STEELE,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

Before me are several motions filed by petitioner. I will treat each motion separately.

Petitioner filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on May 28, 2008. On October 21, 2008, while the petition was pending, attorney Kent Gipson entered his appearance on behalf of petitioner. I denied the petition on June 29, 2009. Petitioner appealed, and the United States Court of Appeals for the Eighth Circuit denied petitioner's application for a certificate of appealability on December 30, 2009. Petitioner, through counsel, filed a motion for relief from judgment on June 25, 2010. I denied the motion on March 17, 2011. A copy of the Court's order denying the motion for relief from judgment was sent via CM/ECF to petitioner's counsel on March 17, 2011. Petitioner did not file a timely

notice of appeal from the denial of his motion for relief from judgment. Petitioner is still represented by counsel in these proceedings.

On May 16, 2011, petitioner called the Court to inquire as to the status of his motion for relief from judgment. Petitioner was informed that the motion had been denied, and a deputy clerk mailed to petitioner a copy of the Court's order. On May 24, 2011, according to the prison mailbox rule, petitioner filed a notice of appeal and a motion to reopen the time for filing an appeal.

Pursuant to Rule 4(a) of the Federal Rules of Appellate Procedure, the Court can reopen the time for filing an appeal if the Court finds, among other things, "that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry." Fed. R. App. P. 4(a)(6). In this case, the Court's records show that petitioner's counsel received notice of the Court's March 17, 2011, Order on the day it was entered by the Court. As a result, petitioner does not qualify to have the time for filing an appeal reopened, and I will deny the motion.

Petitioner has also requested that I appoint counsel to represent him on appeal. Petitioner should refile the motion in the United States Court of Appeals for the Eighth Circuit. This Court does not make such appointments.

Finally, I do not believe that petitioner put forward sufficiently persuasive arguments to justify issuing a certificate of appealability from the denial of his motion

for relief from judgment. Petitioner has failed to make a substantial showing of the denial of a constitutional right, which requires a demonstration “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.” Khaimov v. Crist, 297 F.3d 783, 785 (8th Cir. 2002) (quotation omitted). Thus, I will not issue a certificate of appealability.

Accordingly,

IT IS HEREBY ORDERED that petitioner’s motion to reopen the time for filing a notice of appeal [#44] is **DENIED**.

IT IS FURTHER ORDERED that petitioner’s motion for leave to proceed in forma pauperis on appeal [#42] is **GRANTED**.

IT IS FURTHER ORDERED that petitioner’s motion for appointment of counsel [#43] is **DENIED** without prejudice.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

Dated this 1st day of June, 2011.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE